

Core Legal Rights of South Carolina Crime Victims

Presented by

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What are “core rights?”

- Those rights which are fundamental to ensuring the meaningful participation of crime victims in the criminal justice system
- Found in our state constitution (Article I, Section 24, “Victims’ Bill of Rights”)
- Also found in S.C. Code of Laws (16-3-1505-1550).

Are these rights mandatory for crime victims?

- Yes! They are not optional
- **Not** discretionary
- **Not** just “a nice thing to do for those poor victims!”
- ***These rights are the law!***

GATEKEEPER, *n.*

- A person in charge of a gate, usually to identify, count, supervise, etc. the traffic or flow through it.

Who is responsible to make sure a victim’s rights are protected?

- YOU, as the victim advocate
- Specific governmental entities at various points in the process
- Law enforcement
- Prosecutors
- Judges

Come on! Are you serious?

- Yes, the law states that crime victim’s rights are to be ***“honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.”***

(S.C. Code Ann. Section 16-3-1505)

Who is a “victim?”

- Victims' Bill of Rights/ broad definition:
“A person who suffers direct or threatened physical, psychological or financial harm as the result of the commission or attempted commission of a crime against him.” S.C. Constitution, Art. I, Section 24 (C)(2).

Also includes: spouse, parent, child, lawful representative if victim is deceased, a minor or is incompetent

Who is a “victim?”

- S.C. Code's definition of victim/more narrow
- Excludes persons who are investigated for, charged with or convicted of the offense in question
- Also excludes property offenses < \$1,000.00.

IMPORTANT!!!

- The definition of “victim” in the statute impermissibly narrows the reach of the Victims' Bill of Rights by excluding certain classes of people and certain property crimes.
- A statute, even an enabling statute, **CANNOT LIMIT CONSTITUTIONAL RIGHTS!**

CORE VICTIMS' RIGHTS

1. The Right to be Treated with Fairness, Respect and Dignity

- Right to be free from harassment, intimidation, name-calling, being deprived of their core rights.

2. The Right to Information

- Information about the criminal process
- Different from the right to notice
- Informed about other rights
(i.e., incident report, victim assistance providers, compensation, information on status of the case)

3. The Right to Notice

- Different from the right to information
- Victim must be notified in advance of specific events
- Arrest, change in custody status, escape, date, time and place of court hearings and right to be present and be heard.
- “Reasonably informed”

3. The Right to Notice

- Victim has the right to be present at any proceeding which may be dispositive of the defendant's charge(s).

Who Is Responsible to Provide Notice to the Victim?

- Law enforcement
- Solicitors
- Courts

4. The Right to Be Present

- General right to be present at “any criminal proceedings which are dispositive of the charges where the defendant has a right to be present.”
- This right is not to be denied at trial!
- Bond hearings, preliminary hearings, plea, trial, sentencing, post-conviction relief, parole hearings

5. Right to Confer

- Victims have the right to give input and confer with prosecutors, **but**
- Prosecutors have control and discretion over decisions re: plea offers, plea v. trial, to dismiss charges or reduce charges to lesser offense or to decide that prosecution is not warranted

6. Right to Be Heard

- At any proceeding involving a post-arrest release decision, plea or sentencing
- Victim may make an oral or written statement

7. Right to Reasonable and Prompt Disposition

- Victims should be allowed to participate in proceedings regarding continuances and court scheduling
- This right is unique to South Carolina.

8. The Right to Protection/Information About Release

- Physical protection from defendant
- Information about defendant that allows victims to protect themselves
- Law enforcement; "Any measures necessary to protect the victim"/ transportation to and from courthouse
- Courts: Impose conditions on defendant's release (restraining orders)
- Arrest, bond hearings, escape, post-conviction

9. The Right to Restitution

- "Prompt and full restitution"
- Victim must provide itemized list of losses

10. The Right to Compensation

- Statutory not constitutional right
- Law enforcement must provide info to victim regarding compensation eligibility and application for benefits and assist victim with application

Other Rights by Statute

- Intervention services with creditors, employers and others (16-3-1550 (A))
- Court's verification of reasonable notice by solicitor (16-3-1550(D))
- Right to be represented by counsel and civil remedies 16-3-1535 (A) (1)-(4)
- Return of property (16-3-1535 (E))
- Interpreter (17-1-50 (B)(1))
- Separate waiting area (16-3-1550 (C))
- Alternative means of testifying (16-3-1550 (E))

Victims' Responsibilities

- Victim must provide name, contact info to the following:
 - 1) Law Enforcement
 - 2) Solicitor
 - 3) Court
 - 4) Dept. of Corrections/ DJJ
 - 5) Dept. of Probation, Parole & Pardon Services